

**AMENDMENTS TO THE CITY TAX CODE OF THE CITY OF
TEMPE, ARIZONA IMPLEMENTING PROPOSITION 401
PASSED BY THE VOTERS OF TEMPE ON MAY 18, 2010**

Section 1. That Sections 16-410, 16-425, 16-427, 16-430, 16-435, 16-444, 16-445, 16-450, 16-455, 16-460, 16-470, 16-475, 16-480 and 16-610 of the Tax Code of the City of Tempe are amended to read as follows:

Sec. 16-410. Amusements, exhibitions, and similar activities.

(a) The tax rate shall be at an amount equal to ~~one and eight-tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of providing amusement that begins in the city or takes place entirely within the city, which includes the following type or nature of businesses:

- (1) Operating or conducting theaters, movies, operas, shows of any type or nature, exhibitions, concerts, carnivals, circuses, amusement parks, menageries, fairs, races, contests, games, billiard or pool parlors, bowling alleys, skating rinks, tennis courts, golf courses, video games, pinball machines, public dances, dance halls, sports events, jukeboxes, batting and driving ranges, animal rides, or any other business charging admission for exhibition, amusement, or entertainment.
- (2) Reserved.
- (3) Health spas and fitness centers, which charge for the use of their premises, whether on a per-event use or for long-term usage, such as membership fees.

(b) *Deductions or exemptions.* The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:

- (1) Reserved.
- (2) Amounts retained by the Arizona Exposition and State Fair Board from ride ticket sales at the annual Arizona State Fair.
- (3) Income received from a hotel business subject to tax under Section 16-444, if all of the following apply:
 - (A) The hotel business receives gross income from a customer for the specific business activity otherwise subject to amusement tax.
 - (B) The consideration received by the hotel business is equal to or greater than the amount to be deducted under this subsection.

(C) The hotel business has provided an exemption certificate to the person engaging in business under this Section.

- (4) Income that is specifically included as the gross income of a business activity upon which another Section of this article imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
- (5) Income from arranging transportation connected to amusement activity that is separately stated to the customer, not to exceed consideration paid to the transportation business.

(c) The tax imposed by this Section shall not include arranging an amusement activity as a service to a person's customers if that person is not otherwise engaged in the business of operating or conducting an amusement themselves or through others. This exception does not apply to businesses that operate or conduct amusements pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the amusement is performed by third party independent contractors. For the purposes of this paragraph "arranging" includes billing for or collecting amusement charges from a person's customers on behalf of the persons providing the amusement.

Sec. 16-425. Job printing.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of job printing, which includes engraving of printing plates, embossing, copying, micrographics, and photo reproduction.

(b) The tax imposed by this Section shall not apply to:

- (1) Job printing purchased for the purpose of resale by the purchaser in the form supplied by the job printer.
- (2) Out-of-city sales.
- (3) Out-of-state sales.
- (4) Job printing of newspapers, magazines, or other periodicals or publications for a person who is subject to the tax imposed by subsection 16-435(a) or an equivalent excise tax; provided further that said person is properly licensed by the taxing jurisdiction at the location of publication.
- (5) Sales of job printing to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is

for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(6) Reserved.

Sec. 16-427. Manufactured buildings.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income, including site preparation, moving to the site, and/or set-up, upon every person engaging or continuing in the business activity of selling manufactured buildings within the City. Such business activity is deemed to occur at the business location of the seller where the purchaser first entered into the contract to purchase the manufactured building.

(b) Sales of used manufactured buildings are not taxable.

(c) The sale prices of furniture, furnishings, fixtures, appliances, and attachments that are not incorporated as component parts of or attached to a manufactured building are exempt from the tax imposed by this Section. Sales of such items are subject to the tax under Section 16-460.

(d) Under this Section, a trade-in will not be allowed for the purpose of reducing the tax liability.

Sec. 16-430. Timbering and other extraction.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the following businesses:

- (1) Felling, producing, or preparing timber or any product of the forest for sale, profit, or commercial use.
- (2) Extracting, refining, or producing any oil or natural gas for sale, profit, or commercial use.

(b) The rate specified in subsection (a) above shall be applied to the value of the entire product extracted, refined, produced, or prepared for sale, profit, or commercial use, when such activity occurs within the City, regardless of the place of sale of the product or the fact that delivery may be made to a point without the City or without the State.

(c) If any person engaging in any business classified in this Section ships or transports products, or any part thereof, out of the State without making sale of such products, or ships his products outside of the State in an unfinished condition, the value of the products or articles in

the condition or form in which they existed when transported out-of-state and before they enter interstate commerce shall be the basis for assessment of the tax imposed by this Section.

(d) Reserved.

Sec. 16-435. Publishing and periodicals distribution.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business activity of:

- (1) Publication of newspapers, magazines, or other periodicals when published within the City, measured by the gross income derived from notices, subscriptions, and local advertising as defined in Section 16-405. In cases where the location of publication is both within and without this State, gross income subject to the tax shall refer only to gross income derived from residents of this State or generated by permanent business locations within this State.
- (2) Distribution or delivery within the City of newspapers, magazines, or other periodicals not published within the City, measured by the gross income derived from subscriptions.

(b) "Location of publication" is determined by:

- (1) Location of the editorial offices of the publisher, when the physical printing is not performed by the publisher; or
- (2) Location of either the editorial offices or the printing facilities, if the publisher performs his own physical printing.

(c) "Subscription income" shall include all circulation revenue of the publisher except amounts retained by or credited to carriers or other vendors as compensation for delivery within the State by such carriers or vendors, and further except sales of published items, directly or through distributors, for the purpose of resale, to retailers subject to the Privilege Tax on such resale.

(d) "Circulation", for the purpose of measurement of gross income subject to the tax, shall be considered to occur at the place of delivery of the published items to the subscriber or intended reader irrespective of the location of the physical facilities or personnel of the publisher. However, delivery by the United States mails shall be considered to have occurred at the location of publication.

(e) *Allocation of taxes between cities and towns.* In cases where publication or distribution occurs in more than one city or town, the measurement of gross income subject to tax by the City shall include:

- (1) That portion of the gross income from publication which reflects the ratio of circulation within this City to circulation in all incorporated cities and towns in this State having substantially similar provisions; plus
- (2) Only when publication occurs within the City, that portion of the remaining gross income from publication which reflects the ratio of circulation within this City to the total circulation of all incorporated cities or towns in this State within which cities the taxpayer maintains a location of publication.

(f) The tax imposed by this Section shall not apply to sales of newspapers, magazines or other periodicals to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property sold is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

Sec. 16-444. Hotels.

The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of operating a hotel charging for lodging and/or lodging space furnished to any:

- (a) Person.
- (b) *Exclusions.* The tax imposed by this Section shall not include:
 - (1) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this state or any other state or a political subdivision of this state or of any other state in a privately operated prison, jail or detention facility.
 - (2) Gross proceeds of sales or gross income that is properly included in another business activity under this article and that is taxable to the person engaged in that business activity, but the gross proceeds of sales or gross income to be deducted shall not exceed the consideration paid to the person conducting the activity.
 - (3) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients that would not be taxable if engaged in by a person not subject to tax under this article.
 - (4) Gross proceeds of sales or gross income from transactions or activities that are not limited to transients and that would not be taxable if engaged in by a person subject to taxation under Section 16-410 or Section 16-475 due to an exclusion, exemption or deduction.

- (5) Gross proceeds of sales or gross income from commissions received from a person providing services or property to the customers of the hotel. However, such commissions may be subject to tax under Section 16-445 or Section 16-450 as rental, leasing or licensing for use of real or tangible personal property.
- (6) Income from providing telephone, fax or internet services to customers at an additional charge, that is separately stated to the customer and is separately maintained in the hotel's books and records. However, such gross proceeds of sales or gross income may be subject to tax under Section 16-470 as telecommunication services.

Sec. 16-445. Rental, leasing, and licensing for use of real property.

(a) The tax rate shall be at an amount equal to ~~one and eight-tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, or renting real property located within the City for a consideration, to the tenant in actual possession, or the licensing for use of real property to the final licensee located within the City for a consideration, including any improvements, rights, or interest in such property; provided further that:

- (1) Payments made by the lessee to, or on behalf of, the lessor for property taxes, repairs, or improvements are considered to be part of the taxable gross income.
- (2) Charges for such items as telecommunications, utilities, pet fees, or maintenance are considered to be part of the taxable gross income.
- (3) However, if the lessor engages in telecommunication activity, as evidenced by installing individual metering equipment and by billing each tenant based upon actual usage, such activity is taxable under Section 16-470.

(b) If individual utility meters have been installed for each tenant and the lessor separately charges each single tenant for the exact billing from the utility company, such charges are exempt.

(c) Charges by a qualifying hospital, qualifying community health center or a qualifying health care organization to patients of such facilities for use of rooms or other real property during the course of their treatment by such facilities are exempt.

(d) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services are exempt from the tax imposed by this Section.

(e) Exempt from the tax imposed by this Section is gross income derived from the rental, leasing, or licensing for use of real property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) Reserved.

(j) Exempt from the tax imposed by this Section is gross income derived from the activities taxable under Section 16-444 of this code.

(k) Reserved.

(l) Reserved.

(m) Reserved.

(n) Notwithstanding the provisions of Section 16-200(b), the fair market value of one (1) apartment, in an apartment complex provided rent free to an employee of the apartment complex is not subject to the tax imposed by this Section. For an apartment complex with more than fifty (50) units, an additional apartment provided rent free to an employee for every additional fifty (50) units is not subject to the tax imposed by this Section.

(o) Income derived from incarcerating or detaining prisoners who are under the jurisdiction of the United States, this State or any other state or a political subdivision of this State or of any other state in a privately operated prison, jail or detention facility is exempt from the tax imposed by this Section.

(p) Charges by any hospital, any licensed nursing care institution, or any kidney dialysis facility to patients of such facilities for the use of rooms or other real property during the course of their treatment by such facilities are exempt.

(q) Charges to patients receiving "personal care" or "directed care", by any licensed assisted living facility, licensed assisted living center or licensed assisted living home as defined and licensed pursuant to Chapter 4, Title 36, Arizona Revised Statutes and Title 9 of the Arizona Administrative Code are exempt.

(r) Income received from the rental of any "low-income unit" as established under Section 42 of the Internal Revenue Code, including the low-income housing credit provided by IRC Section 42, to the extent that the collection of tax on rental income causes the "gross rent"

defined by IRC Section 42 to exceed the income limitation for the low-income unit is exempt. This exemption also applies to income received from the rental of individual rental units subject to statutory or regulatory "low-income unit" rent restrictions similar to IRC Section 42 to the extent that the collection of tax from the tenant causes the rental receipts to exceed a rent restriction for the low-income unit. This subsection also applies to rent received by a person other than the owner or lessor of the low-income unit, including a broker. This subsection does not apply unless a taxpayer maintains the documentation to support the qualification of a unit as a low-income unit, the "gross rent" limitation for the unit and the rent received from that unit.

Sec. 16-450. Rental, leasing, and licensing for use of tangible personal property.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of leasing, licensing for use, or renting tangible personal property for a consideration, including that which is semi-permanently or permanently installed within the City as provided by Regulation.

(b) *Special provisions relating to long term motor vehicle leases.* A lease transaction involving a motor vehicle for a minimum period of twenty-four (24) months shall be considered to have occurred at the location of the motor vehicle dealership, rather than the location of the place of business of the lessor, even if the lessor's interest in the lease and its proceeds are sold, transferred, or otherwise assigned to a lease financing institution; provided further that the city or town where such motor vehicle dealership is located levies a Privilege Tax or an equivalent excise tax upon the transaction.

(c) Gross income derived from the following transactions shall be exempt from Privilege Taxes imposed by this Section:

- (1) Rental, leasing, or licensing for use of tangible personal property to persons engaged or continuing in the business of leasing, licensing for use, or rental of such property.
- (2) Rental, leasing, or licensing for use of tangible personal property that is semi-permanently or permanently installed within another city or town that levies an equivalent excise tax on the transaction.
- (3) Rental, leasing, or licensing for use of film, tape, or slides to a theater or other person taxed under Section 16-410, or to a radio station, television station, or subscription television system.
- (4) Rental, leasing, or licensing for use of the following:
 - (A) Prosthetics.

(B) Income-producing capital equipment.

(C) Mining and metallurgical supplies.

These exemptions include the rental, leasing, or licensing for use of tangible personal property which, if it had been purchased instead of leased, rented, or licensed by the lessee or licensee, would qualify as income-producing capital equipment or mining and metallurgical supplies.

- (5) Rental, leasing, or licensing for use of tangible personal property to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when the property so rented, leased, or licensed is for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512 or rental, leasing, or licensing for use of tangible personal property in this State by a nonprofit charitable organization that has qualified under Section 501(c)(3) of the United States Internal Revenue Code and that engages in and uses such property exclusively for training, job placement or rehabilitation programs or testing for mentally or physically handicapped persons.
- (6) Separately billed charges for delivery, installation, repair, and/or maintenance as provided by Regulation.
- (7) Charges for joint pole usage by a person engaged in the business of providing or furnishing utility or telecommunication services to another person engaged in the business of providing or furnishing utility or telecommunication services.
- (8) Reserved.
- (9) Rental, leasing, or licensing of aircraft that would qualify as aircraft acquired for use outside the State, as prescribed by Regulation, if such rental, leasing, or licensing had been a sale.
- (10) Rental, leasing or licensing for use of an alternative fuel vehicle if such vehicle was manufactured as a diesel fuel vehicle and converted to operate on alternative fuel and equipment that is installed in a conventional diesel fuel motor vehicle to convert the vehicle to operate on an alternative fuel, as defined in A.R.S. Section 1-215.
- (11) Rental, leasing, and licensing for use of solar energy devices, for taxable periods beginning from and after July 1, 2008. The lessor shall register with the Department of Revenue as a solar energy retailer. By registering, the lessor acknowledges that it will make its books and records relating to leases of solar energy devices available to the Department of Revenue and city, as applicable, for examination.

Sec. 16-455. Restaurants and bars.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of preparing or serving food or beverage in a bar, cocktail lounge, restaurant, or similar establishment where articles of food or drink are prepared or served for consumption on or off the premises, including also the activity of catering. Cover charges and minimum charges must be included in the gross income of this business activity.

(b) Caterers and other taxpayers subject to the tax who deliver food and/or serve such food off premises shall also be allowed to exclude separately charged delivery, set-up, and clean-up charges, provided that the charges are also maintained separately in the books and records. When a taxpayer delivers food and/or serves such food off premises, his regular business location shall still be deemed the location of the transaction for the purposes of the tax imposed by this Section.

(c) The tax imposed by this Section shall not apply to sales to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(d) The tax imposed by this Section shall not apply to sales of food, beverages, condiments and accessories used for serving food and beverages to a commercial airline, as defined in A.R.S. Section 42-5061(A)(49), that serves the food and beverages to its passengers, without additional charge, for consumption in flight.

(e) The tax imposed by this Section shall not apply to sales of prepared food, beverages, condiments or accessories to a public educational entity, pursuant to any of the provisions of Title 15, Arizona Revised Statutes, to the extent such items are to be prepared or served to individuals for consumption on the premises of a public educational entity during school hours.

(f) For the purposes of this Section, "accessories" means paper plates, plastic eating utensils, napkins, paper cups, drinking straws, paper sacks or other disposable containers, or other items which facilitate the consumption of the food.

Sec. 16-460. Retail sales—Measure of tax; burden of proof; exclusions.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of selling tangible personal property at retail, EXCEPT THAT THE TAX RATE SHALL BE AT AN AMOUNT EQUAL TO ONE AND EIGHT-TENTHS PERCENT (1.8%) OF THE GROSS INCOME FROM THE BUSINESS ACTIVITY UPON EVERY PERSON ENGAGING OR CONTINUING IN THE BUSINESS OF SELLING FOOD FOR HOME CONSUMPTION.

(b) The burden of proving that a sale of tangible personal property is not a taxable retail sale shall be upon the person who made the sale.

(c) *Exclusions.* For the purposes of this Chapter, sales of tangible personal property shall not include:

- (1) Sales of stocks, bonds, options, or other similar materials.
- (2) Sales of lottery tickets or shares pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
- (3) Sales of platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by Regulation.
- (4) Gross income derived from the transfer of tangible personal property which is specifically included as the gross income of a business activity upon which another Section of this Article imposes a tax, shall be considered gross income of that business activity, and are not includable as gross income subject to the tax imposed by this Section.
- (5) Sales by professional or personal service occupations where such sales are inconsequential elements of the service provided.

(d) Reserved.

(e) When this City and another Arizona city or town with an equivalent excise tax could claim nexus for taxing a retail sale, the city or town where the permanent business location of the seller at which the order was received shall be deemed to have precedence, and for the purposes of this Chapter such city or town has sole and exclusive right to such tax.

(f) The appropriate tax liability for any retail sales where the order is received at a permanent business location of the seller located in this City or in an Arizona city or town that levies an equivalent excise tax shall be at the tax rate of the city or town of such seller's location.

(g) Retail sales of prepaid calling cards or prepaid authorization numbers for telecommunications services, including sales of reauthorization of a prepaid card or authorization number, are subject to tax under this Section.

Sec. 16-470. Telecommunication services.

(a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of providing telecommunication services to consumers within this City.

- (1) Telecommunication services shall include:
 - (A) Two-way voice, sound, and/or video communication over a communications channel.
 - (B) One-way voice, sound, and/or video transmission or relay over a communications channel.
 - (C) Facsimile transmissions.
 - (D) Providing relay or repeater service.
 - (E) Providing computer interface services over a communications channel.
 - (F) Time-sharing activities with a computer accomplished through the use of a communications channel.
- (2) Gross income from the business activity of providing telecommunication services to consumers within this City shall include:
 - (A) All fees for connection to a telecommunication system.
 - (B) Toll charges, charges for transmissions, and charges for other telecommunications services; provided that such charges relate to transmissions originating in the City and terminating in this State.
 - (C) Fees charged for access to or subscription to or membership in a telecommunication system or network.
 - (D) Charges for monitoring services relating to a security or burglar alarm system located within the City where such system transmits or receives signals or data over a communications channel.
 - (E) Charges for telephone, fax or internet access services provided at an additional charge by a hotel business subject to taxation under Section 16-444.

(b) *Resale telecommunication services.* Gross income from sales of telecommunication services to another provider of telecommunication services for the purpose of providing the purchaser's customers with such service shall be exempt from the tax imposed by this Section; provided, however, that such purchaser is properly licensed by the City to engage in such business.

(c) *Interstate transmissions.* Charges by a provider of telecommunication services for transmissions originating in the City and terminating outside the State are exempt from the tax imposed by this Section.

- (d) Reserved.
- (e) Reserved.
- (f) *Prepaid calling cards.* Telecommunications services purchased with a prepaid calling card that are taxable under Section 16-460 are exempt from the tax imposed under this Section.
- (g) *Internet access services.* The gross income subject to tax under this Section shall not include sales of internet access services to the person's subscribers and customers. For the purposes of this subsection:
 - (1) *"Internet"* means the computer and telecommunications facilities that comprise the interconnected worldwide network of networks that employ the transmission control protocol or internet protocol, or any predecessor or successor protocol, to communicate information of all kinds by wire or radio.
 - (2) *"Internet access"* means a service that enables users to access content, information, electronic mail or other services over the internet. Internet access does not include telecommunication services provided by a common carrier.

Sec. 16-475. Transporting for hire.

The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of providing the following forms of transportation for hire from this City to another point within the State:

- (a) Transporting of persons or property by railroad; provided, however, that the tax imposed by this subsection shall not apply to transporting freight or property for hire by a railroad operating exclusively in this State if the transportation comprises a portion of a single shipment of freight or property, involving more than one railroad, either from a point in this State to a point outside this State or from a point outside this State to a point in this State. For purposes of this paragraph, "a single shipment" means the transportation that begins at the point at which one of the railroads first takes possession of the freight or property and continues until the point at which one of the railroads relinquishes possession of the freight or property to a party other than one of the railroads.
- (b) Transporting of oil or natural or artificial gas through pipe or conduit.
- (c) Transporting of property by aircraft.
- (d) Reserved.

- (1) Reserved.
- (2) Reserved.
- (3) Reserved.
- (4) Reserved.
- (e) Reserved.
- (f) *Deductions or exemptions.* The gross proceeds of sales or gross income derived from the following sources is exempt from the tax imposed by this Section:
 - (1) Income that is specifically included as the gross income of a business activity upon which another section of Article IV imposes a tax, that is separately stated to the customer and is taxable to the person engaged in that classification not to exceed consideration paid to the person conducting the activity.
 - (1) Income from arranging amusement or transportation when the amusement or transportation is conducted by another person not to exceed consideration paid to the amusement or transportation business.
- (g) The tax imposed by this Section shall not include arranging transportation as a convenience to a person's customers if that person is not otherwise engaged in the business of transporting persons, freight or property for hire. This exception does not apply to businesses that dispatch vehicles pursuant to customer orders and send the billings and receive the payments associated with that activity, including when the transportation is performed by third party independent contractors. For the purposes of this paragraph, "arranging" includes billing for or collecting transportation charges from a person's customers on behalf of the persons providing the transportation.

Sec. 16-480. Utility services

- (a) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the gross income from the business activity upon every person engaging or continuing in the business of producing, providing, or furnishing utility services, including electricity, electric lights, current, power, gas (natural or artificial), or water, to:
 - (1) Consumers or ratepayers who reside within the City.
 - (2) Consumers or ratepayers of this City, whether within the City or without, to the extent that this City provides such persons utility services, excluding consumers or ratepayers who are residents of another city or town which levies an equivalent excise tax upon this City for providing such utility services to such persons.

(b) *Exclusion of certain sales of natural gas to a public utility.* Notwithstanding the provisions of subsection (a) above, the gross income derived from the sale of natural gas to a public utility for the purpose of generation of power to be transferred by the utility to its ratepayers shall be considered a retail sale of tangible personal property subject to Sections 16-460 and 16-465, and not considered gross income taxable under this Section.

(c) *Resale utility services.* Sales of utility services to another provider of the same utility services for the purpose of providing such utility services either to another properly licensed utility provider or directly to such purchaser's customers or ratepayers shall be exempt and the deductible from the gross income subject to the tax imposed by this Section, provided that the purchaser is properly licensed by all applicable taxing jurisdictions to engage or continue in the business of providing utility services, and further provided that the seller maintains proper documentation, in a manner similar to that for sales for resale, of such transactions.

(d) Reserved.

(e) The tax imposed by this Section shall not apply to sales of utility services to a qualifying hospital, qualifying community health center or a qualifying health care organization, except when sold for use in activities resulting in gross income from unrelated business income as that term is defined in 26 U.S.C. Section 512.

(f) The tax imposed by this Section shall not apply to sales of natural gas or liquefied petroleum gas used to propel a motor vehicle.

(g) The tax imposed by this Section shall not apply to:

- (1) Revenues received by a municipally owned utility in the form of fees charged to persons constructing residential, commercial or industrial developments or connecting residential, commercial or industrial developments to a municipal utility system or systems if the fees are segregated and used only for capital expansion, system enlargement or debt service of the utility system or systems.
- (2) Revenues received by any person or persons owning a utility system in the form of reimbursement or contribution compensation for property and equipment installed to provide utility access to, on or across the land of an actual utility consumer if the property and equipment become the property of the utility. This exclusion shall not exceed the value of such property and equipment.

(h) The tax imposed by this Section shall not apply to sales of alternative fuel as defined in A.R.S. Section 1-215, to a used oil fuel burner who has received a Department of Environmental Quality permit to burn used oil or used oil fuel under A.R.S. Section 49-426 or Section 49-480.

Sec. 16-610. Use tax; imposition of tax; presumption.

(a) There is hereby levied and imposed, subject to all other provisions of this Chapter, an excise tax on the storage or use in the City of tangible personal property, for the purpose of raising revenue to be used in defraying the necessary expenses of the City, such taxes to be collected by the Tax Collector.

(b) The tax rate shall be at an amount equal to ~~one and eight tenths percent (1.8%)~~ TWO PERCENT (2%) of the:

- (1) Cost of tangible personal property acquired from a retailer, upon every person storing or using such property in this City.
- (2) Gross income from the business activity upon every person meeting the requirements of subsection 16-620(b) or (c) who is engaged or continuing in the business activity of sales, rentals, leases, or licenses of tangible personal property to persons within the City for storage or use within the City, to the extent that tax has been collected upon such transaction.
- (3) Cost of the tangible personal property provided under the conditions of a warranty, maintenance, or service contract.
- (4) Cost of complimentary items provided to patrons without itemized charge by a restaurant, hotel, or other business.
- (5) Cost of food consumed by the owner or by employees or agents of the owner of a restaurant or bar subject to the provisions of Section 16-455 of this Chapter.

(c) It shall be presumed that all tangible personal property acquired by any person who at the time of such acquisition resides in the City is acquired for storage or use in this City, until the contrary is established by the taxpayer.

(d) *Exclusion.* For the purposes of this Article, the acquisition of the following shall not be deemed to be the purchase, rental, lease, or license of tangible personal property for storage or use within the City:

- (1) Stocks, bonds, options, or other similar materials.
- (2) Lottery tickets or shares sold pursuant to Article I, Chapter 5, Title 5, Arizona Revised Statutes.
- (3) Platinum, bullion, or monetized bullion, except minted or manufactured coins transferred or acquired primarily for their numismatic value as prescribed by regulation.

(e) Reserved.

Section 2. That Section 16-120 of the Tax Code of the City of Tempe is amended to read as follows:

Sec. 16-120. ~~Reserved~~ DEFINITIONS—FOOD FOR HOME CONSUMPTION.

(a) FOR THE PURPOSES OF THIS SECTION ONLY, THE FOLLOWING DEFINITIONS SHALL BE APPLICABLE:

- (1) *ELIGIBLE GROCERY BUSINESS* MEANS AN ESTABLISHMENT WHOSE SALES OF FOOD ARE SUCH THAT IT IS ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 (P.L. 95-113; 91 STAT. 958.7 U.S.C. SECTION 2011 ET SEQ.), ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979. AN ESTABLISHMENT IS DEEMED ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM IF IT IS AUTHORIZED TO PARTICIPATE IN THE PROGRAM BY THE UNITED STATES DEPARTMENT OF AGRICULTURE FOOD AND NUTRITION SERVICE FIELD OFFICE ON THE EFFECTIVE DATE OF THIS SECTION, OR IF, PRIOR TO A REPORTING PERIOD FOR WHICH THE RETURN IS FILED, SUCH RETAILER PROVES TO THE SATISFACTION OF THE TAX COLLECTOR THAT THE ESTABLISHMENT, BASED ON THE NATURE OF THE RETAILER'S FOOD SALES, COULD BE ELIGIBLE TO PARTICIPATE IN THE FOOD STAMP PROGRAM ESTABLISHED BY THE FOOD STAMP ACT OF 1977 ACCORDING TO REGULATIONS IN EFFECT ON JANUARY 1, 1979.
- (2) *FACILITIES FOR THE CONSUMPTION OF FOOD* MEANS TABLES, CHAIRS, BENCHES, BOOTHS, STOOLS, COUNTERS, AND SIMILAR CONVENIENCES, TRAYS, GLASSES, DISHES, OR OTHER TABLEWARE AND PARKING AREAS FOR THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD IN OR ON THE PREMISES ON WHICH THE RETAILER CONDUCTS BUSINESS.
- (3) *FOOD FOR CONSUMPTION ON THE PREMISES* MEANS ANY OF THE FOLLOWING:
 - (A) "HOT PREPARED FOOD" AS DEFINED BELOW.
 - (B) HOT OR COLD SANDWICHES.
 - (C) FOOD SERVED BY AN ATTENDANT TO BE EATEN AT TABLES, CHAIRS BENCHES, BOOTHS, STOOLS, COUNTERS, AND SIMILAR CONVENIENCES AND WITHIN PARKING AREAS FOR THE CONVENIENCE OF IN-CAR CONSUMPTION OF FOOD.

- (D) FOOD SERVED WITH TRAYS, GLASSES, DISHES, OR OTHER TABLEWARE.
- (E) BEVERAGES SOLD IN CUPS, GLASSES, OR OPEN CONTAINERS.
- (F) FOOD SOLD BY CATERERS.
- (G) FOOD SOLD WITHIN THE PREMISES OF THEATRES, MOVIES, OPERAS, SHOWS OF ANY TYPE OR NATURE, EXHIBITIONS, CONCERTS, CARNIVALS, CIRCUSES, AMUSEMENT PARKS, FAIRS, RACES, CONTESTS, GAMES, ATHLETIC EVENTS, RODEOS, BILLIARD AND POOL PARLORS, BOWLING ALLEYS, PUBLIC DANCES, DANCE HALLS, BOXING, WRESTLING, AND OTHER MATCHES, AND ANY BUSINESS WHICH CHARGES ADMISSION, ENTRANCE, OR COVER FEES FOR EXHIBITION, AMUSEMENT, ENTERTAINMENT, OR INSTRUCTION.
- (H) ANY ITEMS CONTAINED IN SUBSECTIONS (a)(3)(A) THROUGH (G) ABOVE EVEN THOUGH THEY ARE SOLD ON A “TAKE-OUT” OR “TO GO” BASIS, AND WHETHER OR NOT THE ITEM IS PACKAGED, WRAPPED, OR IS ACTUALLY TAKEN FROM THE PREMISES.

(4) *HOT PREPARED FOOD* MEANS THOSE PRODUCTS, ITEMS, OR INGREDIENTS OF FOOD WHICH ARE PREPARED AND INTENDED FOR CONSUMPTION IN A HEATED CONDITION. “HOT PREPARED FOOD” INCLUDES A COMBINATION OF HOT AND COLD FOOD ITEMS OR INGREDIENTS IF A SINGLE PRICE HAS BEEN ESTABLISHED.

(5) *PREMISES* MEANS THE TOTAL SPACE AND FACILITIES IN OR ON WHICH A VENDOR CONDUCTS BUSINESS AND WHICH ARE OWNED OR CONTROLLED, IN WHOLE OR IN PART, BY A VENDOR OR WHICH ARE MADE AVAILABLE FOR THE USE OF CUSTOMERS OF THE VENDOR OR GROUP OF VENDORS, INCLUDING ANY BUILDING OR PART OF A BUILDING, PARKING LOT, OR GROUNDS.

(b) *FOOD FOR HOME CONSUMPTION* MEANS ALL FOOD, EXCEPT FOOD FOR CONSUMPTION ON THE PREMISES, IF SOLD BY ANY OF THE FOLLOWING:

- (1) AN ELIGIBLE GROCERY BUSINESS.
- (2) A PERSON WHO CONDUCTS A BUSINESS WHOSE PRIMARY BUSINESS IS NOT THE SALE OF FOOD BUT WHO SELLS FOOD WHICH IS DISPLAYED, PACKAGED, AND SOLD IN A SIMILAR MANNER AS AN ELIGIBLE GROCERY BUSINESS.

- (3) A PERSON WHO SELLS FOOD AND DOES NOT PROVIDE OR MAKE AVAILABLE ANY FACILITIES FOR THE CONSUMPTION OF FOOD ON THE PREMISES.
- (4) A PERSON WHO CONDUCTS A DELICATESSEN BUSINESS EITHER FROM A COUNTER WHICH IS SEPARATE FROM THE PLACE AND CASH REGISTER WHERE TAXABLE SALES ARE MADE OR FROM A COUNTER WHICH HAS TWO CASH REGISTERS AND WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES, OR A RETAILER WHO CONDUCTS A DELICATESSEN BUSINESS WHO USES A CASH REGISTER WHICH HAS AT LEAST TWO TAX COMPUTING KEYS WHICH ARE USED TO RECORD TAXABLE AND TAX EXEMPT SALES.
- (5) RESERVED.
- (6) VENDING MACHINES AND OTHER TYPES OF AUTOMATIC RETAILERS.
- (7) A PERSON'S SALES OF FOOD, DRINK AND CONDIMENT FOR CONSUMPTION WITHIN THE PREMISES OF ANY PRISON, JAIL OR OTHER INSTITUTION UNDER THE JURISDICTION OF THE STATE DEPARTMENT OF CORRECTIONS, THE DEPARTMENT OF PUBLIC SAFETY, THE DEPARTMENT OF JUVENILE CORRECTIONS OR A COUNTY SHERIFF.

Section 3. That Regulation 16-120.1 of the Tax Code of the City of Tempe is amended to read:

Reg. 16-120.1. ~~Reserved.~~ FOOD FOR HOME CONSUMPTION: RECORDKEEPING AND REPORTING REQUIREMENTS.

(a) REPORTING. SUCH PERSONS WHO SELL FOOD FOR HOME CONSUMPTION SHALL, IN CONJUNCTION WITH THE RETURN REQUIRED PURSUANT TO SECTION 16-520, REPORT TO THE TAX COLLECTOR IN A MANNER PRESCRIBED BY THE TAX COLLECTOR ALL SALES OF FOOD FOR HOME CONSUMPTION EXEMPTED FROM TAXES IMPOSED BY THIS CHAPTER.

(b) RECORDKEEPING.

- (1) RETAILERS SHALL MAINTAIN ACCURATE, VERIFIABLE, AND COMPLETE RECORDS OF ALL PURCHASES AND SALES OF TANGIBLE PERSONAL PROPERTY IN ORDER TO VERIFY EXEMPTIONS FROM TAXES IMPOSED BY THIS CHAPTER. A RETAILER MAY USE ANY METHOD OF REPORTING THAT PROPERLY REFLECTS ALL PURCHASES AND SALES OF FOOD FOR HOME CONSUMPTION, AS WELL AS ALL PURCHASES AND SALES OF

ITEMS SUBJECT TO TAXES IMPOSED BY THIS CHAPTER, PROVIDED THAT SUCH RECORDS ARE MAINTAINED IN ACCORDANCE WITH ARTICLE III, AND REGULATIONS OF THE TAX COLLECTOR.

- (2) ANY PERSON WHO FAILS TO MAINTAIN RECORDS AS PROVIDED HEREIN SHALL BE DEEMED TO HAVE HAD NO SALES OF FOOD FOR HOME CONSUMPTION, AND IF UPON REQUEST BY THE TAX COLLECTOR, A PERSON CANNOT DEMONSTRATE TO THE TAX COLLECTOR THAT SUCH RECORDS AND REPORTS DO PROPERLY REFLECT ALL SALES OF FOOD FOR HOME CONSUMPTION, THE TAX COLLECTOR MAY RECOMPUTE THE AMOUNT OF TAX TO BE PAID AS PROVIDED IN SECTIONS 16-370 AND 16-545(b).